

1904-050 Chancery Causes: Virginia Iron Coal & Coke Co] vs James W. Orr
Lee Co.

Bibb

CA-Contract Dispute

T-Property

CIRCUIT COURT OF LEE COUNTY.

VIRGINIA IRON, COAL AND COKE COMPANY

VS.

JAMES W. ORR.

To the Honorable H. A. W. Skeen, Judge of said Court:

Your orator, the Virginia Iron, Coal and Coke Company, a corporation duly organized and existing under the laws of the State of Virginia, respectfully shows unto your Honor as follows:

On the 3rd day of November, 1899, your orator, by writing of that date, leased from W. H. Beasley and Laura L. Beasley, his wife, the exclusive right and privilege of mining and taking iron ore from a certain tract of land containing 25 acres more or less, situate in the Jonesville Magisterial District in Lee County, Virginia, more particularly described in said writing, together with ample and various rights of ingress and egress, building rights, and other mining rights thereon, more particularly described in said writing, and agreed to pay therefor the sum of ten cents (10¢) per ton for all the iron ore mined and taken from said land, payments therefor to be made every three months; said writing further providing that if your orator should fail to pay for as much as one thousand of said tons of iron ore a year, then said lease evidenced by said writing as aforesaid should be void as to both parties; provided, however, that any surplus over said one thousand tons per year paid for in the preceding years should be taken into account so that the yearly average paid for should not be less than one thousand tons. The said writing of lease was duly admitted to record in the office of the Clerk of the County Court of Lee County, on the 31st day of March, 1900, in Deed Book 36, page

(2)

83, and a duly certified copy thereof is herewith filed as a part hereof, marked "Exhibit A", from which the above recited provisions, and all other provisions thereof, will more fully appear.

Pursuant to the terms and provisions of said lease, your orator took possession of said land, and shortly thereafter, with the knowledge, acquiescence and consent of the lessors, and pursuant to the rights conferred upon it by said lease, your orator proceeded to erect thereon several miners' houses and other buildings, and has continued to use and occupy said houses and buildings by its employees and tenants until this present time, and without any claim whatsoever on the part of the said lessors for rents or other compensation than the rent or royalty provided for in the lease aforesaid.

On the _____ day of _____, 1903, one James W. Orr purchased the leased premises above described from W. H. Beasley and wife, but neither he nor the said lessors, Beasley and wife, communicated the fact of such purchase to your orator until quite recently, when the said Orr made the astonishing claim which is hereinafter referred to. The said Orr bought with both actual and constructive knowledge of the rights of your orator.

Your orator will now show to your Honor that it mined and shipped from said leased premises, and paid therefor, prior to the 3rd day of November, 1903, the end of the last lease year before this present and current year, 3975.24 tons of iron ore, the payment therefor amounting to \$397.52, being just \$2.48 less than the minimum royalty required under the terms of the lease for the period of four years, from November 3, 1899, to November 3, 1903.

On the 26th day of January, 1904, your orator having a few days prior thereto learned that the said James W. Orr had purchased the leased premises aforesaid from the said Beasley and wife, and therefore claimed to have succeeded to all the rights of the said Beasley and wife, placed to the credit of the said James W. Orr, in the Powell's Valley Bank at Jonesville, Virginia, pursuant to the provisions of said written lease, the sum of \$102.48, to pay for the balance of minimum royalty or rent due for the year ending November 3, 1903, and to pay for the minimum royalty for this present or current year ending November 3, 1904, your orator preferring to anticipate, as it had the right to do under the terms of the lease, the payment of all of the minimum royalty for the current year, rather than to pay it by quarterly installments. But the said Orr declined to allow said deposit to remain to his credit, and required said Bank to return it to your orator, stating as his reason that said lease had been forfeited, and that the acceptance by him of the said sum of \$102.48 would have the effect of renewing the lease, which he was unwilling to allow.

The said James W. Orr claims that, under the terms of said lease, the same is now forfeited by reason of the failure of your orator to pay within the time required by said lease the minimum royalty aforesaid, and is strenuously insisting upon his alleged right to enforce said forfeiture, and is also seeking to collect from your orator a claim for use and occupation of said houses upon said land, which is inequitable and without foundation or right either in law or in equity. The contention of the said Orr is that the said lease is forfeited as aforesaid for failure to pay the small balance of minimum rent or royalty which was due, according to his contention, on the 3rd day of

November, 1903, and further that, inasmuch as your orator did not actively mine ore from the said leased premises (and this your orator admits is a fact as to the greater part of the time covered by said account), your orator had no right to use the said houses and buildings without paying rent therefor to the owner of the land. Your orator, however, alleges that this contention is wholly untenable under the plain provisions of the lease, and that your orator has the same rights under said lease, by the payment of the minimum royalty, when it is not doing any mining thereon, as it would have by paying for a thousand tons of ore actually mined during each and every year. The question of the correctness of this account might not be in itself a proper subject for jurisdiction in equity, but your orator is advised that a Court of Equity will not allow the said Orr to enforce the forfeiture upon which he insists as aforesaid, and that for the purpose of enjoining him from seeking to do so, your orator has a right to come into a Court of Equity, and that this Court, having taken jurisdiction of the matter for one purpose, will do complete justice between the parties and adjudicate in this suit all the questions arising between them under said lease. Your orator avers that the forfeiture provision in the said lease relied upon by said Orr was intended merely as a security for the payment of royalties, and that a payment or tender of royalties within a reasonable time after the same become due is in substantial compliance with the terms of the lease and will be so declared in equity.

Your orator has not desired nor intended to abandon said lease or allow the same to be forfeited. It is true that it has not been recently mining upon the said leased premises, but

until within the last month or so it has been mining upon an adjacent piece of property, driving a tunnel for the purpose of striking the ore on the said Beasley land at a lower level. A short time ago it suspended mining upon said adjoining land on account of the depressed condition of the iron market, but expects to resume such mining as soon as the condition of the market improves sufficiently to justify the same, and then as soon thereafter as said tunnel can be completed to the line of the Beasley tract, it desires and intends to work the ore on said Beasley tract, and in the meantime it desires to keep said lease alive; and it has been always, and is now, able, ready and anxious to carry out all the terms thereof, and here and now again tenders and offers to pay to the said Orr, or into Court if so directed, the said sum of \$102.48, or whatever sum your Honor may decree to be due as royalty under said lease.

Your orator now avers that the said Orr has, within the last few days, brought a suit at law upon an account, copy of which is filed herewith, in which suit said alleged forfeiture will be insisted upon. Your orator avers that the said suit at law is an action of assumpsit, and that, so far as your orator is informed, the declaration thereof does not allege in terms that said lease has been forfeited, but the question of the forfeiture of the lease is necessarily involved in said suit, and your orator is informed, believes and charges that said alleged forfeiture will be set up in said suit. Your orator alleges that it cannot have in a Court of Law an adequate remedy against said alleged forfeiture, and that therefore irreparable injury will be done to your orator in said suit unless said James W. Orr is enjoined from prosecuting the same by a Court of Equity.

The premises considered, the prayer of your orator is that the said James W. Orr be made a party defendant and required to answer this bill, but answer under oath is hereby expressly waived; that the said James W. Orr be enjoined and restrained from enforcing the forfeiture of said lease which he insists upon and seeks to enforce as aforesaid, and from prosecuting said action at law; that he be required to accept the tender which has heretofore been made to him and is made herein; that the said contract of lease be construed upon the question of the right of your orator to occupy the buildings on said leased premises without the payment of further rent than the minimum royalty, or such actual royalty as may be due for iron ore actually mined therefrom; and that the correctness or incorrectness of said account of said James W. Orr be incidentally inquired into and settled. And if in anywise mistaken in this special prayer, your orator prays for such other and general relief herein as its cause merits in a Court of Equity. And your orator will ever pray, etc.

VIRGINIA IRON, COAL AND COKE COMPANY,

By Counsel.

D. D. Hume Jr.,

Bullitt & Hume,

Counsel for Complainant.

VIRGINIA, CITY OF BRISTOL, TO-WIT:

I, G. Cabell Childress, a Notary Public in and for the City and State aforesaid, do certify that ^{J. W. Cure} ~~J. W. Cure~~ this day personally appeared before me in my said City and made oath that he is the ^{General Manager and Agent} ~~Secretary and Agent~~ of the Virginia Iron, Coal and Coke Company, and that the matters and things contained in the foregoing bill of complaint are true to the best of his knowledge and belief.

Given under my hand this 10 day of May, 1904.

G. Cabell Childress,
Notary Public.

My Commission Expires
July 10-1907.—

Wa. Iron Coal + Coke
Co.

vs. { Bill.

James W. Orr

Filed May 26th 1904.

W. E. Ewing Clerk.

1904 2nd June Rules

Spa Executed & D.N.

1st July Rules

Declarator & answer filed

Decree Final Sept Term
1904

Costs:

Clerk \$5.05

Tax 1.50

Shff. 50

Atty 15.00

\$22.15

CIRCUIT COURT of LEE COUNTY:

VIRGINIA IRON, COAL & COKE COMPANY)

v.)

JAMES W. ORR.)

Amended Bill.

To the Honorable H. A. W. Skeen, Judge of Circuit Court:

Your Orator, the Virginia Iron, Coal & Coke Company, states unto the Court, that, in its original bill in this cause, your Orator alleged, as follows: "Your Orator will now show unto your Honor, that it mined and shipped from its said leased premises and paid therefor, prior to the 3rd day of November, 1903, the end of the last lease year before this present current year, 3975.24 tons of iron ore, the payment therefor amounting to \$397.52, being just \$2.48 less than the minimum royalty required under the terms of the lease for the period of four years, from November 3, 1899 to November 3, 1903."

Your Orator now states, that, in its said allegation, it made a mistake as to the amount of ore mined and as to the amount of money paid the said Beasley therefor, between the dates aforesaid; and that, as a matter of fact, between said dates, it mined from the said land a total of 6207.89 tons and paid the said Beasley therefor the total sum of \$620.77. And your Orator states, that this sum was considerably more than the minimum due to the said Beasley, or his assigns, under the said lease, up to, and including, the date at which this suit was brought.

Your Orator here repeats the allegations made in the said original bill, except as herein changed.

(Signed)

PENNINGTON BROS.

BULLITT & KELLY

Attorneys for Complainant.

Virginia Iron Coal
& Coke Co.

vs. } Amended Bill

Jas. M. Lee.

Filed in open
Court & by leave then
of Sept 21st 1904

H. C. T. Ewing
Clerk

CIRCUIT COURT FOR LEE COUNTY.

JAMES W. ORR,

ADS

VIRGINIA IRON, COAL AND COKE COMPANY.

To the Hon. H. A. W. Ekeem, Judge of the said Court:-

The demurrer and answer of James W. Orr to a bill filed against him in the said Court by the Virginia Iron, Coal and Coke Company:

Respondent says that the said bill is not sufficient in law to require him to answer, and he demurs thereto, and not waiving said demurrer, but relying and insisting thereon, should further answer be required of him he answers as follows:

That it is true that on the 3rd day of November, 1899, the plaintiff by writing of that date, leased from W. H. Beasly and Laura L. Beasly, his wife, the exclusive right and privilege of mining iron ore from the tract of land described in the said bill, together with and including the right of ingress and egress upon the said premises, with certain mining rights and privileges as set forth in said writing; that the lessee agreed to pay therefor, the sum of ten cents per ton for all the iron ore mined and taken from said land, the payment therefor to be made every three months; that said writing provided that, if the plaintiff should fail to pay for as much as one thousand tons of ore a year, then said writing should be void as to both parties; provided, however, if any over one thousand tons be paid for in the preceeding year, it should be taken into account, so that the yearly payments should not be less than one thousand tons. Said lease was duly recorded, as stated in the bill, and ~~that~~ the exhibit "A" referred to in said bill is a copy thereof; but respondent denies that the said writing, or lease, provided for the erection of any buildings, such as houses, barns &c, on the leased premises, and alleges that the right for building purposes, under the said lease, is limited, by the terms thereof, to the construction of railroads, tramways, and any other road necessary for the mining of the said ore.

Respondent denies that the plaintiff complied with

the terms of the provisions in said lease, took possession of said land shortly after the date thereof, with the knowledge, acquiescence and consent of the lessor, and pursuant to the right conferred by the said lease, proceeded to erect thereon several mining houses and other buildings, but he alleges that said buildings were erected pursuant to a subsequent verbal agreement thereafter set out. He denies that said company, or plaintiff, has continued to use and occupy said houses and buildings, by its employees and tenants, until this present time, without any claim whatsoever on the part of the lessor for rents or other compensation than the rents and royalty provided for in said lease and respondent will allege in this answer the correct facts in regard to the erection of the said buildings, and the occupancy thereof by the said plaintiff. Respondent says that on the 23rd day of January, 1903, he purchased the leased premises, described in said bill, from the said W. H. Beasly and wife, but does not know whether Beasly and wife communicated the fact to the plaintiff or not, but this respondent did write said company, or its attorney, advising it of this purchase, on or about January 5th, 1904, but he alleges that the said deed from the said Beasly and wife was duly recorded on the 23rd day of January, 1903, and the plaintiff had constructive notice of this purchase at that time, a copy of which deed is herewith filed, marked "Deed", and prays that it be read and treated as a part of this answer.

Your respondent supposes that it is true, that the plaintiff mined and shipped from the said leased premise and paid therefor, prior to the 3rd day of November, 1903, 3975 .24 tons of iron ore, which payments therefor amounted to \$397.52. This, however, the said respondent neither admits nor denies, but demands strict proof thereof. Even, however, if this be true, the said 3975.24 tons of iron ore was mined prior to the 1st day of October, 1901, and if any payment therefor was made, said payment was made prior to, or during the year 1901. If said payment was made, it is true that the same amounted to just \$2.48 less than the minimum royalty under the terms of the lease

for the four years ending November 3rd, 1903, if said contract can be construed to mean that said plaintiff could rely on said payment and mine no ore from the said premises during the years 1902-3. Your respondent, however, is advised and therefore alleges that the true legal and equitable construction of the said contract is, that the surplus over one thousand tons of iron ore mined during the year 1901 should be applied only to the year 1902. If this be not the correct construction of the said lease, then the plaintiff could occupy the buildings by tenants and pay the minimum royalty required to be paid under the terms of the lease, and in this way it could go on from year to year and so occupy and receive the rents for said houses, mine on adjacent and other property all the time, and make a profit out of your respondent's property over and above the minimum royalty, which is contrary to the true intent and purpose of said lease, because the true intent is, that the premises is only leased for the purpose of mining iron ore therefrom, and if proper diligence be used in the working and mining, the said iron ore would soon be mined and the lessor receive his royalty in a reasonable time, and then be entitled to the use and occupancy of the said premises and buildings thereon.

It may be further true that said plaintiff only a few days prior to the 26th day of January, 1904, actually learned that this respondent had purchased the said premises aforesaid from the said Beasly and wife, it, however, had constructive notice of said purchase, as the deed from Beasly and wife to the said respondent was recorded in the Clerk's Office of the County Court of Lee County, Virginia, on the 23rd day of January, 1903, and said plaintiff is bound thereby. It may be true that the plaintiff, under its interpretation of the provisions of the said lease, on the 26th day of January, 1904, placed to the credit of this respondent in the Powell's Valley Bank, at Jonesville, the sum of \$102.48, to pay for the balance of the minimum royalty of the rents due for the year ending November 3rd, 1903, and to pay for the minimum royalty for this present or current year, ending November 3rd, 1904, which said sum your respondent refused to ac-

cept and so notified said plaintiff and said bank, he having been advised that such acceptance would operate as a revival or renewal of a lease which, under its express provisions, had become null and void. This respondent here alleges that said deposit in said bank was an attempt upon the part of the said plaintiff to renew or revive a lease, which by its own neglect and abandonment of the contract was avoided, and which had been treated and acted upon by said plaintiff and this respondent, as absolutely void.

It is further true that this respondent claims that under the terms of the said lease the same is not only forfeited, but by reason of the failure of the plaintiff to pay, within the time required in said lease, the minimum royalty aforesaid, it is absolutely void, and it is true that he is also seeking to collect from said plaintiff a claim for the use and occupancy of the said houses and buildings upon the said land, but he denies that the same is inequitable and without foundation, of right in law or equity. It is further true that the said respondent contends that said lease is void as aforesaid for the failure of the plaintiff to pay the minimum rents or royalty as provided for in said contract, and he further contends that, in as much as the said plaintiff did not mine ore from said leased premises after the 1st day of October, 1901, that said plaintiff had no right to use said houses and buildings without paying rents therefor to the owner of the said land.

This respondent denies that the plaintiff has the same right under the said lease, as aforesaid, by the payment of the minimum royalty when it is not doing any mining thereon as it would have by paying for one thousand tons of ore actually mined during each and every year. And he further denies that the forfeiture provision, if it may be so termed, in said lease, was intended merely as a security for the payment of the royalty, and that the payment or tender of the royalty in a reasonable time after the same became due, is in strict compliance with the lease, and will be so declared in equity. On the other hand, however, this respondent is advised, and so alleges, that said forfeiture provision was intended and made for the benefit of the lessor and

his assigns, and that said lessor, or his assigns, has the right under said provision to treat said lease as terminated upon the failure of the said plaintiff to comply with the provision thereof. The plaintiff having the right under the terms of the said contract to terminate said lease, at its will, the lessor, or his assigns, under the law has an equal right to terminate said lease on the failure of the plaintiff to comply therewith, or any provision thereof.

Your respondent says that he does not know the plaintiff's desire or intention about abandoning, or not abandoning, said lease, or to allow the same to be forfeited, but the plaintiff's conduct in not mining on said premises, and not paying the royalty as provided for in the said lease, he alleges, has rendered said lease void.

Respondent says that it is true that the said company has not been mining upon the said leased premises, and it is true that the said company has been mining upon other and adjacent property, but he knows nothing of its driving a tunnel for the purpose of striking the ore on the said Beasley land on a lower level. He says that it is true that the said company, some time ago, mined upon the adjacent land, but for what purpose he is not informed, except what the plaintiff has stated in his bill; and the depressed condition of the market assigned as a reason for its suspension, is not a valid and legal reason for the plaintiff not complying with the terms of the Beasley lease. And respondent denies the right of the plaintiff to tender \$5 pay into court the said sum of \$102.48, or any other sum, as stated in said bill, in order to comply with the terms of the said lease, from its interpretation, or for any other purpose. Respondent says it is true that he has recently brought a suit at law upon an account against the said plaintiff, to collect the money due him from the said plaintiff, for the use and occupancy of the buildings on the said leased premises. It is true that the said suit is an action at law, in assumpsit. Your respondent denies that the question of forfeiture is necessarily involved in said suit, and

that said forfeiture will be necessarily set up in said suit; but alleges that whether said lease be void or not, he has a right of action against the plaintiff for the use and occupancy of said buildings while said plaintiff was using same while mining on other than the Beasly land. Respondent further denies that the plaintiff can not have an adequate remedy at law, and that irreparable injury will be done to it in the said suit at law, and alleges that the plaintiff has no distinct defense in equity that it could not make in the said suit at law.

Respondent further answering states, that some time after the execution of the said lease by the said Beasly and wife to the said plaintiff company, it was ascertained by their agent, or superintendent, one Henry Taylor, that no provision was made in the said lease for the erection of any buildings for miners, or other purposes on the said leased premises, and said Beasly and wife were informed by the said Taylor that it was the desire of the said company to erect buildings on the said premises, and thereupon the following subsequent verbal agreement for the erection of the buildings was made; that the said company should have the right to erect all buildings, such as barns and dwelling houses for the miners that might be desired for the mining of ore on the said leased premises, and that such buildings as should be thus erected, should only be used by the company while it was mining on the said Beasly land, and not while mining elsewhere, or on any adjacent property, and at the termination of the said lease, all buildings that had been so erected, under this agreement, should belong to the said Beasly and wife, and all buildings that the said company, whether barns or dwelling houses for miners, has erected on said premises have been erected thereon under and pursuant to the terms of the said subsequent agreement.

Respondent alleges that the account sued on, in the said law suit, is for the use and occupancy of the said buildings by the said company while mining on other property, and since the company ceased to mine on the said Beasly land. A certified copy of the account sued on, and the declaration in said suit at law, is herewith filed as a part hereof, marked "B" & "C" respectively.

7.

And now respondent denies each and every allegation in the said plaintiff's bill, not before admitted or denied, and having answered as fully as he is advised that it is material for him to answer, prays that the injunction be dissolved with damages, and the plaintiff's bill be dismissed, and that he be permitted to proceed with his action at law, and that he be dismissed with his reasonable cost in this behalf expended. And he will ever pray &c.

*B. H. Sewell
J. C. Hall. 3 / 20.*

James W Orr
ado³/₃ Summer.

Va. Iron Coal & Coke Co.

Filed 1st July Rules
1904. H.C. Ewing, Clk.

CIRCUIT COURT of LEE COUNTY:

VIRGINIA IRON, COAL & COKE COMPANY)	
)	
v.)	Decree Final.
)	
JAMES W. ORR.)	

This day came the complainant by counsel and, by leave of Court, filed an amended bill herein, and, on motion of complainant, this cause is dismissed without prejudice. And it is further ordered, that the injunction heretofore granted herein be, and the same is, hereby dissolved. And it is further ordered, that the defendant recover of the complainant his costs in this behalf expended.

Virginia Iron boat
& coke co.

vs. } Deere firm

Jas. W. Orr.

Entered this

Sept 21st 1904

J. A. W. Stum

Entered & Choy O. B.

No. 7, page 5747c

CIRCUIT COURT OF LEE COUNTY, VIRGINIA.

Virginia Iron, Coal & Coke Company

v.

IN CHANCERY.

James W. Orr.

This cause came on this 25th day of May, 1904, to be heard in vacation upon the bill and exhibit filed therewith and affidavit of James W. Orr, and was argued by counsel. On consideration whereof, it is adjudged, ordered and decreed that the defendant, James W. Orr, his agents and attorneys, be, and they are hereby, enjoined and restrained from further prosecuting the common law action referred to in the bill, recently instituted by the said James W. Orr against the said Virginia Iron, Coal & Coke Co., and now pending in the said Circuit Court of Lee County; but this injunction shall not take effect until the said Virginia Iron, Coal & Coke Co. or someone for it shall have executed bond before the Clerk of this Court, conditioned as required by law, in the penalty of \$1500.00.

H. A. W. Sullivan Judge

J. Lee County Circuit Court

Va. J. C. & C. Co.
12. { In Chy.

James W. Orr

Decree May 25, 1904.

Entered Chy. Order
Book No. 7 page 494

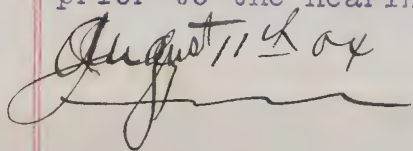
C I R C U I T C O U R T O F L E E C O U N T Y .

VIRGINIA IRON, COAL AND COKE COMPANY

VS.

JAMES W. ORR.

It is agreed between the complainant and defendant herein, by their counsel, that the following statement may be read in this cause as evidence on behalf of the complainant, in the same manner and to the same effect as if deposed to in person by the witness, R. M. Bibb; but it is further agreed that the said statement shall be subject to any legal and valid exception or objection which the defendant may desire to make to the same on account of any matter of substance, but not of form, provided said exception or objection be endorsed hereon at least five days prior to the hearing of the cause.

August 11, 1904


VIRGINIA IRON, COAL AND COKE COMPANY,

By *Bullitt & Kael*,
Attorneys.

JAMES W. ORR,

By *J. C. Kael & B. H. Sewell*.
Attorneys.

S T A T E M E N T O F R. M. B I B B,
TO BE READ IN LIEU OF HIS DEPOSITION.

My name is R. M. Bibb. I was the Superintendent of Mines for the Virginia Iron, Coal and Coke Company from the 12th day of May, 1902, until the 15th day of July, 1904, having resigned my position as such on the last named date.

As Superintendent of said Mines I had general charge and supervision of the operations of all the iron ore mining conducted by or on behalf of the said Company. Prior to my appointment as General Superintendent of Mines, I was employed by said Company as District Superintendent for the Roanoke District. I have been with this Company since its organization in 1899 until last month.

The Company erected six dwelling houses on what is known as the Beasley property, in Lee County. These houses were erected for occupancy by employees of the Company, and were intended primarily for use and occupancy by men who were engaged in doing the work of mining on the said Beasley property, or doing work preparatory thereto, and they were used for this purpose. The Company also built a barn upon said premises, for the purpose of housing the stock used by the Company in connection with the work aforesaid. I would estimate the cost of these houses about as follows: One at \$250.00, one at \$225.00, one at \$150.00, and two at about \$60.00. The barn I would estimate to have cost about \$300.00. There was also another dwelling house erected on the said premises, which cost about \$250.00, and which was destroyed by fire. These houses were very plainly and cheaply built, were what are commonly known as miners' tenement houses, and were not of a character to be of permanent value. They

were built out in the country, in a thinly settled neighborhood, where the demand for such houses would be dependent almost exclusively upon some such operations as the Company was carrying on, or intended to carry on, and would be of very little intrinsic or rental value, except for the purposes for which the Company intended to use them.

The Beasley property was a part of an operation of the Virginia Iron, Coal and Coke Company in Lee County, Virginia, known as the Truro operation, composed of the Beasley property and other property adjoining and near thereto. The work of actually taking the ore from the Beasley property was suspended about the _____ day of _____, 1901, owing to the inconvenience and expense of mining the ore from said property upon the level at which it was then being worked, and because it was found that it would be cheaper and more convenient to reach and work the ore upon this Beasley property by means of a tunnel driven from mines upon adjoining land. Consequently the Company was proceeding, in connection with its other mining operations at Truro, to drive a tunnel toward the Beasley land, which would enable it to reach the ore thereon at a lower and more convenient level than that from which it had been formerly worked. On or about the 24th day of December, 1903, owing to the depression of the iron market, the Company determined to temporarily suspend its operations at Truro, and ceased all work there for the time. These temporary suspensions of iron ore mining are common in the iron business. This suspension was not permanent, nor intended to be permanent. The Company intended to keep alive the leases which it held in Lee County at the Truro operation, so that it might resume the mining as soon as the iron market improved. This intention had never been abandoned when this suit was

brought. Upon the contrary, the Company, while only operating one or two of its furnaces, was improving and repairing its furnaces and making every preparation to resume the work of mining iron ore as soon as the iron market should improve. As stated before, fluctuations in the iron market are common incidents to the business, and temporary suspension of the manufacture of iron by large manufacturing companies, covering periods of months, and even years, are not uncommon. The Virginia Iron, Coal and Coke Company is the owner of a large number of furnaces. Its main business is the manufacture of iron, and it is largely dependent upon leases similar to the one in controversy here for its supply of iron ore.

The houses and the barn which were erected on the Beasley property were not only convenient, but were necessary for the full and proper and most economical use and enjoyment of the minerals and the mining and mineral interests and rights which the Virginia Iron, Coal and Coke Company acquired under the lease from W. H. Beasley and wife, dated the 3rd day of November, 1899, and filed with the papers in this cause. The right to erect and use such buildings as were erected and were being used by the said Company on the Beasley property is a right usually and commonly exercised by this Company and other similar Companies under leases similar to the Beasley lease.

Prior to my connection with the Virginia Iron, Coal and Coke Company, I was engaged in the same capacity by the Crozer Iron Company. I have had a large and extensive practical experience in this class of work.

J. M. Bish

STATE OF VIRGINIA,

TO-WIT:

CITY OF ROANOKE,

I, W. H. Tinsley, a Notary Public in
and for the City of Roanoke, in the State of Virginia, do certify
that R. M. Bibb this day personally appeared before me in my
said City, and, after acknowledging the signature to the forego-
ing writing as being his genuine signature, made oath, in due
form of law, that the statements contained in the foregoing writ-
ing are true.

Given under my hand this 20th day of August, 1904.

W. H. Tinsley,

My commission expires _____ Notary Public.
January 14th, 1908.

Va Iron, Coal & Coke Co.

vs Depo of R. M. Bille

James W Orr.

Filed Aug' 22" 1904.

H. C. Ewing
Clerk.

EXCEPTIONS TO THE STATEMENT OF R.M.BIBB.

James W. Orr

vs.

Assumpsit.

Virginia Iron Coal & Coke Co.

The Statement of R.M.Bibb filed in this case by agreement of parties, is excepted to by the plaintiff,

1st. Because it is wholly immaterial and irrelevant.

2nd. That part of said statement which attempts to construe the deed of lease between W.H.Beasley and wife and the defendant Company, dated Nov. 3rd, 1899, is excepted to because *said deed is in writing and* it is the exclusive province of the Court to construe the terms of said deed of lease, and it is not competent for the witness to say whether or not the terms of the said deed of lease grants the right to erect houses and barns on said premises and occupy the same free of charge;

3rd. Said statement and all parts thereof in which the witness states a matter of opinion is excepted to as evidence because opinions are not evidence, and further, because the matters and things about which the witness expresses opinions are in no way the subject of expert testimony, and even if they were the subject of expert testimony, the witness has not shown himself to be such expert;

4th. That part of said statement which attempts to prove that the right to erect and use such buildings as were erected and used by said Company on said premises is a right usually and commonly exercised by said Company and similar companies under similar leases, is excepted to because the same has not been shown to be, and in fact is not, an established general custom, and a matter of general knowledge in the community in which these operations were carried on, so that the said Beasley can be presumed to have known them; and it has not been shown that the said Beasley had any knowledge of any such custom of said company, or similar companies, nor that he contracted with reference to such usage or custom if such existed

Sub. 17th, 1904.

*J.C. Noel, B.H. Lowell and
Duncan & Cridlin,
attys for Plff.*

Whereas, on the 25th day of May, 1904, in a chancery suit now pending in the Circuit Court of Lee County, Virginia, wherein the Virginia Iron, Coal and Coke Company is plaintiff and James W. Orr is defendant, the Honorable H. A. W. Skeen, Judge of said Court, signed a vacation decree enjoining and restraining the said James W. Orr from further prosecuting a certain common law action, referred to in said chancery cause, and recently instituted in the said Court by the said Orr against the said Company, the said injunction decree, however, not to take effect until the said Virginia Iron, Coal and Coke Company, or some one for it, should have executed bond before the Clerk of said Court, conditioned as required by law, in the penalty of \$1500.00:

Now, therefore, for the purpose of complying with the condition in said injunction decree, know all men by these presents, that the Virginia Iron, Coal and Coke Company and John B. Newton do hereby nominate, constitute and appoint Geo. P. Cridlin their true and lawful attorney in fact, for them and in their respective names and steads to enter into and execute before the Clerk of the Circuit Court of Lee County, Virginia, the injunction bond hereinabove referred to, the same to be executed by said attorney in fact in the name of the Virginia Iron, Coal and Coke Company as principal, and in the name of John B. Newton as surety; and we hereby ratify all that our said attorney in fact may lawfully do in the premises.

Witness the following corporate signature and seal of said Company and the signature and seal of the said John B. Newton, this 27th day of May, 1904.

VIRGINIA IRON, COAL AND COKE COMPANY,

By

John B. Newton
Vice-President.

ATTEST:

John B. Newton
Secretary.

John B. Newton
Surety.

(SEAL)

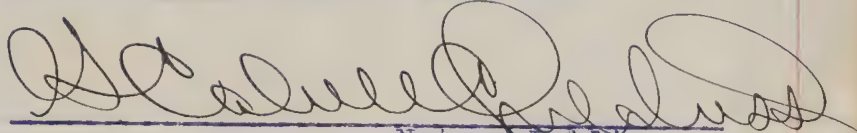
VIRGINIA, CITY OF BRISTOL, TO-WIT:

I, G. Cabell Childress, a Notary Public in and for the City and State aforesaid, do certify that John B. Newton, whose name is signed individually, in proper person, and also signed as ^{Vice-} President of the Virginia Iron, Coal and Coke Company, to the foregoing power of attorney, bearing date on the 27th day of May, 1904, and that J. W. Cure, whose name is signed thereto as Secretary of said Company, have this day acknowledged the same before me in my City aforesaid.

My commission expires:

July 10 - 1907.

Given under my hand this 30 day of May, 1904.

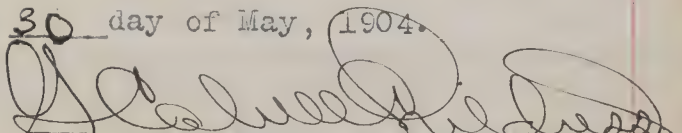

Notary Public.

VIRGINIA, CITY OF BRISTOL, TO-WIT:

This day personally appeared before me Jno. B. Newton, Surety on the aforesaid bond, who on oath stated that he is worth over and above the sum of Fifteen Hundred Dollars, exclusive of the homestead exemption, after paying all of his just debts.

My commission expires July 10th, 1907.

Given under my hand this the 30 day of May, 1904.


Notary Public.

Know all Men by these Presents, That we *Virginia Iron, Coal & Coke Co., a corporation* & *John B. Newton*, by *Geo. P. Cridlie* *their attorney in fact* are held and firmly bound unto the Commonwealth of Virginia, in the sum of

Fifteen Hundred Dollars, to the payment whereof, well and truly to be made to the said Commonwealth of Virginia, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. And we hereby waive the benefit of our exemptions as to this obligation, and also of any claim or right to discharge any liability to the Commonwealth arising under this bond, or by virtue of said office, post or trust, with coupons detached from the bonds of this State. Sealed with our seals, and dated this *the 1st* day of *June* one thousand nine hundred *and four*

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas the above bound *Virginia Iron Coal and Coke Company, a corporation* on *its* bill in chancery against *James W. Orr*

addressed to the Judge of the *Circuit* Court of the *County of Lee* has obtained from the said Judge an injunction to enjoin and restrain *the said James W. Orr, his agents and attorneys* from *further prosecuting the common law action referred to in the said bill, recently instituted by said James W. Orr against said Virginia Iron Coal & Coke Company, Circuit Court of Lee County* until the future order of the said court; and whereas it is provided, by the order of the said Judge awarding the said injunction, that the plaintiff shall not have the benefits thereof until *it* or some one for *it*, shall enter into a bond, with good security, in the clerk's office of the said court, payable to the Commonwealth of Virginia, in the penalty of *Fifteen Hundred* dollars, and conditioned to pay all such costs as may be awarded against the said plaintiff, and all such damages as shall be incurred in case the said injunction be dissolved. Now, therefore, if the said *Virginia Iron, Coal & Coke Company* shall pay all such costs as may be awarded against *it*, and all such damages as shall be incurred in case the said injunction be dissolved, then this obligation to be void, otherwise to remain in full force and virtue.

Executed in the presence of

Virginia Iron, Coal and Coke Company SEAL.
By Geo. P. Cridlie, attorney in fact. SEAL.
John B. Newton, Surety. SEAL.
By Geo. P. Cridlie his attorney in fact. SEAL.

In the Clerk's Office of the _____ Court of the _____ of _____

This day personally appeared before me _____, Clerk of the _____ Court of the _____ of _____

_____, and made oath that _____ estate, after the payment of all _____ just debts, and those for which he _____ bound as security for others and expect to have to pay _____ worth the sum of _____ dollars, over and above all exemptions allowed by law.

Given under my hand, this _____ day of _____, 19 _____

Clerk.

Va. I. C. & C. Co.

to { INJUNCTION
BOND.

Commonwealth.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

James W. Orr

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held
for the said court, on the *3rd* Monday in *June* *1907*, to answer a
bill in chancery exhibited against *him* in our said court by *Virginia*.

Iron Coal & Coke Co. a corporation

And have then there this writ. Witness, *H. T. Ewing*
~~A. B. Munsey~~, Clerk of our said Court, at the
court-house, the *26th* day of *May* *1907*, and in the *12th* year of the
Commonwealth.

H. T. Ewing Clerk.

Va Iron Coal & Coke Co.

vs. {

SUBPOENA

IN CHANCERY

James W. Orr.

Bullitt & Kelly p. q.

To *2nd June* Rules.
Circuit Court.

*Executed by delivering
to James W. Orr, an
attested office copy of
this within writ.*

May 27th 1904.

D. M. Ball & L. C.